

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

IRBY CONSTRUCTION COMPANY

Employer

and

Case 12-RC-9090

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 222, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Irby Construction Company, is engaged in the business of power line, fiber optic and telecommunications construction and maintenance in Florida and other states. On November 5, 2004, the Petitioner, International Brotherhood of Electrical Workers, Local 222, AFL-CIO, filed a petition with the National Labor Relations Board (the Board), under Section 9(c) of the National Labor Relations Act (the Act), seeking to represent a unit of certain employees.

On November 18, 2004, a hearing officer of the Board held a hearing, at which the parties reached certain stipulations that I now approve. Based upon these stipulations, and the record as a whole, I conclude:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.¹

¹ The Employer is a Mississippi corporation with an office and place of business in Jackson, Mississippi and various construction jobs in Florida and other states, where it is engaged in the business of power line, fiber optic and telecommunications construction and maintenance. During the past twelve months, in the course and conduct of its business operations, the Employer purchased and received at its facilities in the State of Florida goods valued in excess of \$50,000 directly from points outside the State of Florida. The parties stipulated that the Employer is subject to the jurisdiction of the Board.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included:

All full-time and regular part-time journeymen linemen, apprentice linemen, equipment operators and groundmen employed by the Employer in the State of Florida, all full-time and regular part-time journeymen linemen, apprentice linemen, equipment operators and groundmen employed by the Employer in the State of Georgia who work under the line of authority of the Employer's Florida Regional Manager, and all full-time and regular part-time foremen employed by the Employer at its location in St. Augustine, Florida.

Excluded:

All foremen employed by the Employer at locations other than St. Augustine, Florida, and all other employees, equipment mechanics, office clerical employees, guards and supervisors as defined by the Act.

6. The eligibility formula set forth in Daniel Construction Co., 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967), reaffirmed and further modified in Steiny & Co., 308 NLRB 1323 (1992) will not be used in this case.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote on whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 222, AFL-CIO. The arrangements for conducting the election will be specified in the Notice of Election that the Board's

Regional Office will issue subsequent to this Decision.²

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should

² There were no issues litigated at the hearing, and the parties waived their rights to file briefs. However, the parties refused to enter into an election agreement because they disagree on whether voting should be conducted by mail ballot or regular ballot. The parties have been informed that they may submit written positions on that issue to the undersigned Regional Director by 4:30 p.m. on November 24, 2004. I will administratively determine the method of balloting and other election arrangements after fully considering the positions of the parties.

have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, FL 33602-5824, on or before **November 30, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (813) 228-2874. Since the list will be made available to all parties to the election, please furnish a total of **two** copies if submitting the list in hard copy form. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has

not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). An employer who fails to do so may not file objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on December 7, 2004. The request may not be filed by facsimile.

Dated at Tampa, Florida this 23rd day of November, 2004.

/s/[Rochelle Kentov
Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824